



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1754 (1940)

April 29, 1988

SUBJECT: Use of Loan and Grant Funds

TO: State Directors, District Directors,
and County Supervisors

PURPOSE/INTENDED OUTCOME

Section 109 of the 1988 Continuing Budget Resolution is reproduced in the attachment. This provision prohibits Farmers Home Administration (FmHA) borrowers/grantees from using fiscal year 1988 funds for any construction contract or subcontract with Japanese contractors or suppliers and their U.S. subsidiaries. This Administrative Notice provides information and guidance on the impact of this provision.

COMPARISON WITH PREVIOUS AN

This replaces the AN 1743 dated April 5, 1988.

IMPLEMENTATION RESPONSIBILITIES

This section of the resolution became effective December 21, 1987; however, its impact may be retroactive to the beginning of the 1988 fiscal year. The impact or implementation details are not yet available. Therefore, in the interim, FmHA borrowers/grantees and applicants who will most likely receive bids from Japanese Contractors should be notified of this provision of the law. The State Director should notify the National Office, attention Program Support Staff, of any situation where either of the following conditions arise:

1. A contractor or supplier may be denied a contract or excluded from participation in an FmHA borrower's/grantee's or applicant's procurement action due to this law.

EXPIRATION DATE: March 31, 1989

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1940-L




Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

1754(1940)

2. A contract was awarded by an FmHA borrower/grantee or applicant on or after September 1, 1987, to a contractor that could be affected by this law.

If you have any questions, contact Gary Morgan of the Program Support Staff at (202) 382-9630 or FTS 382-9630.



VANCE L. CLARK
Administrator

Attachment

positions on such date, as determined under regulations prescribed—

(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

And the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows:

SEC. 109. (a) None of the funds appropriated for fiscal year 1988 by this Resolution or any other law may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

(2) The President or the head of a Federal agency administering the funds for the construction, alteration, or repair may waive the restrictions of paragraph (1) of this subsection with respect to an individual contract if the President or the head of such agency determines that such action is necessary in the public interest. The authority of the President or the head of a Federal agency under this paragraph may not be delegated. The President or the head of a Federal agency waiving such restrictions shall, within 10 days, publish a notice thereof in the Federal Register describing in detail the contract involved and the reason for granting the waiver.

(b)(1) Not later than 30 days after the date of enactment of this Resolution, the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding.

for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information or evidence concerning discrimination in construction projects against United States products and services that are available.

(c)(1) The United States Trade Representative shall maintain a list of each foreign country which—

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding, for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country.

(2) Such list shall include—

(A) each foreign country with respect to which an affirmative determination is made under subsection (b); and

(B) the country of Japan and any other country which has expressed a policy of denying fair and equitable market opportunities for products and services of the United States in procurement or bidding for projects described in paragraph (1) of this subsection.

(3) Any foreign country that is initially listed or that is added to the list maintained under paragraph (1) shall remain on the list until—

(A) such country removes the barriers in construction projects to United States products and services;

(B) such country submits to the President of the United States Trade Representative evidence demonstrating that such barriers have been removed; and

(C) the United States Trade Representative conducts an investigation to verify independently that such barriers have been removed and submits, at least 30 days before granting any such waiver, a report to each House of the Congress identifying the barriers and describing the actions taken to remove them.

(4) The United States Trade Representative shall publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made after publication of the original list.

(d) For purposes of this section—

(1) each foreign instrumentality, and each territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country;

(2) any contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by citizens or nationals of a foreign country, shall be considered to be a contractor or subcontractor of such foreign country;

(3) subject to paragraph (4), any product that is produced or manufactured (in whole or in substantial part) in a foreign country shall be considered to be a product of such foreign country;

(4) the restrictions of subsection (a)(1) shall not prohibit the use, in the construction, alteration, or repair of a public building or public work, of vehicles or construction equipment of a foreign country; and

(5) the terms "contractor" and "subcontractor" include any person performing any architectural, engineering, or other ser-

ices directly related to the preparation for or performance of the construction, alteration, or repair.

(e) Paragraph (a)(1) of this section shall not apply to contracts entered into prior to the date of enactment of this Resolution.

(f) The provisions of this section are in addition to, and do not limit or supersede, any other restrictions contained in any other Federal law.

And the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 110. (a) ADJUSTMENTS FOR EMPLOYEES UNDER STATUTORY PAY SYSTEMS.—

(1) TWO-PERCENT INCREASE.—Notwithstanding any other provision of law, in the case of fiscal year 1988, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 2 percent.

(2) UNIFORM ADJUSTMENTS; DELAYED EFFECTIVE DATE.—Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage and shall take effect as of the beginning of the first applicable pay period beginning on or after January 1, 1988.

(b) TWO PERCENT MILITARY PAY RAISE FOR FISCAL YEAR 1988.—Section 601 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180) is amended by striking out subsections (b), (c), and (d) and inserting in lieu thereof the following:

"(b) TWO PERCENT INCREASE IN BASIC PAY, BAQ, AND BAS.—The rates of basic pay, basic allowance for quarters, and basic allowance for subsistence of members of the uniformed services are increased by 2 percent effective on January 1, 1988.

"(c) TWO PERCENT INCREASE IN CADET AND MIDSHIPMAN PAY.—Effective on January 1, 1988, section 203(c)(1) of title 37, United States Code, is amended by striking out '\$494.40' and inserting in lieu thereof '\$504.30'."

And the Senate agree to the same.

Amendment numbered 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

ASSISTANCE TO THE NICARAGUAN DEMOCRATIC RESISTANCE

SEC. 111. (a) There are hereby transferred to the President \$3,600,000 of unobligated funds, from such accounts for which appropriations were made by Department of Defense appropriations acts for the fiscal year 1987 or prior years, as the President shall